

## COMPLAINT 2000 - NO. 3 - CONFLICT OF INTEREST

### REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

#### 1. Nature of the Complaint

The complaint apparently alleges that Representative Gombosky had a conflict of interest because of his employment with Washington State University. The complaint is severely lacking in facts which would assist this Board in determining what, exactly, the alleged conflict appears to be. In addition, it is alleged that the Representative failed to file the information regarding his employment with the University for preview by this Board; that the Representative violated the law prohibiting outside financial interests; and that the Representative apparently used his office for personal gain or private advantage. We say "apparently," because the complainant basically asks this Board to do an investigation because: "Depending on the specifics of Gombosky's arrangement with the (sic) WSU, he may be in violation of RCW 42.52.900."

#### II. Procedural History

Complaint 2000 - No. 3 was received on April 5, 2000. An investigation was conducted pursuant to RCW 42.52.420. The Board deliberated on the complaint at its regular meeting on May 11, 2000.

#### III. Determination of Allegations of Fact

Prior to being elected to the legislature in 1996, and continuing through 1998, Representative Gombosky worked in Spokane as director of a neighborhood project. He performed a variety of tasks including public relations, editing and instruction. He resigned from this position in 1998 due to the demands of his legislative session schedule.

In 1999, he was offered an interview with Washington State University in Spokane for a short term job in the information or public relations department. Gombosky did not solicit the interview nor the referral which prompted the interview. The job had recently been vacated and the department was in immediate need of an individual with a writing and public relations background. It was understood that funding for the position was secure only until the end of the year as WSU was not sure about long term staffing or funding plans. Because of the temporary nature of the job, the University did not advertise the position although it did invite current employees to consider the position. The two administrators who conducted the interview were satisfied that Gombosky was well-qualified for the position and their offer of employment was accepted with a starting date of approximately September 15. On or about December 6, 1999, Jeff Gombosky resigned his position with the University, by letter, in which he noted this Board's recent oral advisory opinion which indicated that some types of employment between state agencies and legislators were required to be previewed by the Board for conflict of interest analysis.

#### IV. Determination of Allegations of Ethics Law Violations

##### a. Conflict of interest - **RCW 42.52.020**

We recently reaffirmed the citizen-legislator concept, based upon the constitutional principle of a part time legislature (**Complaint 1999 - No. 5**). This principle establishes a presumption in favor of

employment outside the legislature, for legislators. Lobbying and offering legislative advice for compensation would be examples of “per se” conflicts of interest (**Advisory Opinion 1969 - No. 1** and **Advisory Opinion 1995 - No. 1**). Here there are no facts which support a reasonable belief that a “per se” conflict of interest exists. A conflict of interest can exist if a legislator accrues a benefit as a member of a business, profession, occupation, or group to a greater extent than other members of the particular class while discharging his or her legislative duties (**Advisory Opinion 1995 - No. 1** - as well as numerous other references). There are no facts here which create a reasonable belief that any conflict of interest existed.

**b. Filing requirements - RCW 42.52.120**

In some cases the State Ethics Act requires that contracts with state agencies, including employment situations, be submitted to the Legislative Ethics Board for a conflict of interest analysis before the contract or employment is operative. Prior to our decision in **Complaint 1999 - No. 5** ("Murray"), this requirement focused on personal services contracts and independent contractors. In Murray we held that, prospectively, we would require most non-competitive contracts between legislators and state agencies be submitted before-the-fact for conflict analysis, regardless of their characterization as "ordinary employment contracts" or "personal service contracts." Even if we were to assume that Representative Gombosky was hired as a result of a non-competitive process, he resigned his position three months before Murray was decided. There is no reasonable cause to believe that evidence of this employment relationship was required to be filed or pre-viewed.

**c. No outside compensation unless conditions satisfied - RCW 42.52.120**

The pertinent part of this statute prohibits a legislator or legislative employee from receiving any thing of economic value outside his or her official duties unless, in the case of legislators, four conditions are met:

1. The contract must be bona fide and actually performed;
2. The performance of the contract must not be within the course of official duties or under the individual's official supervision;
3. The performance of the contract would not require unauthorized disclosure of confidential information; and
4. The contract cannot have been expressly created or authorized by the officer or employee in his or her official capacity.

No reasonable cause exists to believe that any of these requirements or conditions have not been met.

**d. RCW 42.52.900 - intent section of the State Ethics Act**

Finally, the complaint alleges that the intent section of the State Ethics Act has been violated. The Complainant misreads the law. There are substantive sections of the Act which address the issue of improper personal gain or private advantage. The intent section is a statement of values and serves as a guide to the interpretation of the substantive sections but it is not self-executing. Moreover, there are no facts alleged or discovered which would indicate there is any reasonable cause for believing that Representative Gombosky acted improperly for gain or advantage.

## **V. Conclusion and Order**

This Board determines that this complaint is a fishing expedition and barely, if at all, alleges conduct sufficient to investigate. There are no facts alleged or discovered which even approach the reasonable cause standard this Board must find in order to proceed with the complaint proceedings. The complaint is dismissed.

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James A. Andersen, Chair

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Date